



Office of the Attorney General

State of Texas

August 12, 1993

DAN MORALES

ATTORNEY GENERAL

Ms. Melissa Winblood-Franco
Assistant City Attorney
2 Civic Center Plaza
El Paso, Texas 79999

OR93-534

Dear Ms. Winblood-Franco:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 21755.

The City of El Paso (the "city") has received a request for certain information relating to an accident that occurred at the El Paso International Airport. Specifically, the requestor seeks the emergency medical service reports generated in connection with the treatment of her husband, who later died as the result of injuries suffered at the airport. Section 7(a) of the Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. You received the request for information under the Open Records Act in a letter dated May 20, 1993. We received your request for a decision in a letter dated August 11, 1992. Consequently, you failed to request a decision within the ten days required by section 7(a) of the act.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *id.* Normally, the presumption of openness can be overcome only by a compelling demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records Decision No. 150 (1977); see also Open Records Decision No. 586 (1991) (law enforcement interest of third party may be compelling). You claim that the requested information is excepted from required public disclosure by

section 3(a)(1) of the Open Records Act in conjunction with the Emergency Medical Services Act, chapter 773 of the Texas Health and Safety Code.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 773.091 of the Health and Safety Code provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician, or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

However, the Emergency Medical Services Act also provides under section 773.092(e):

Communications and records that are confidential under this section may be disclosed to: . . .

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093.

Section 773.093, regarding consent, provides the following:

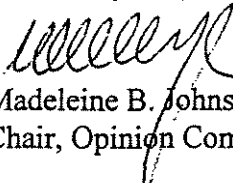
(a) Consent for the release of information must be in writing and signed by the patient . . . or a personal representative if the patient is deceased.

In Open Records Decision No. 598 (1992) (copy enclosed), this office addressed the applicability of section 5.08 of the Medical Practices Act, article 4455b, V.T.C.S., to certain records relating to an individual who died shortly after being cared for by the City of Irving's Emergency Medical Service. The Medical Practices Act makes confidential in section 5.08(b) "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician," but provides for release of such records in section 5.08(h)(5) "to any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for release of confidential information." Section 5.08(j)(1) provides that "[c]onsent for the release of confidential information must be in writing and signed by the patient . . . or a personal representative if the patient is deceased." In Open Records Decision No. 598, this office concluded that the requestor, who was the widow of the subject of the requested medical records, was entitled to the requested information under the Medical Practices Act. We also determined that the Emergency Medical Services Act provides for the same

confidentiality, exceptions to confidentiality, and requirements for the release of information as does section 5.08 of the Medical Practice Act. *See* Open Records Decision No. 598, n. 2. As the facts surrounding this request are identical to those at issue in Open Records Decision No. 598, we conclude that the emergency medical service records at issue here may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act and must be released in their entirety immediately.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Madeleine B. Johnson
Chair, Opinion Committee

MBJ/GCK/jcc

Enclosures: Open Records Decision No. 598

Ref.: ID# 21755

cc: Mrs. Regina Foxx
915 Sycamore Creek
Allen, Texas 75002
(w/o enclosures)